

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

ROCCO CERMELE,

Defendant.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10/20/2020

No. 16 CR 786-04 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

A review of the docket reveals that on December 1, 2016, Defendant Rocco Cermele was charged in a one count Indictment with violating 18 U.S.C. § 1349, conspiracy to commit Mail Fraud, Wire Fraud and Bank Fraud. Following his arraignment, the Defendant was released on a \$50,000 bond. The Defendant is currently scheduled to be sentenced on October 21, 2020.

In light of the Defendant's medical condition which includes hyper tension, high cholesterol, is grossly overweight and suffered a stroke in 2018, the ongoing Coronavirus Disease 2019 ("COVID-19") pandemic, and in order to comply with social distancing protocols and the directives provided by the Chief Judge of the United States District Court for the Southern District of New York to limit in-person court appearances due to the risk presented by COVID-19, it is the Court's determination that in order to prevent serious harm to the interest of justice, Defendant Rocco Cermele can and should be permitted to be sentenced by video teleconference or by telephone conference pursuant to the CARES Act § 15002(b)(2)(A).

Accordingly, it is hereby ORDERED that the Defendant's sentencing hearing scheduled for October 21, 2020 is to be conducted by video teleconference or by telephone conference (if video conference is unavailable) before this Court.

Prior to the video teleconference or telephone conference, Defendant's counsel shall either obtain from Defendant a written or oral waiver of appearance and consent for counsel to proceed

telephonically or video-telephonically either with or without Defendant present by telephone or video. If counsel cannot obtain a written waiver from Defendant, counsel must provide an affidavit confirming counsel has obtained Defendant's consent. The affidavit must establish that counsel: (1) consulted with Defendant regarding his right to be present at all conferences, (2) discussed with Defendant the current public health emergency created by the COVID-19 pandemic and the restrictions to courthouse access that have been implemented as a result, and (3) obtained Defendant's consent to willingly and voluntarily give up his right to be present at conferences for the period of time in which access to the courthouse has been restricted on account of the COVID-19 pandemic.<sup>1</sup> The affidavit shall be e-filed with the Court no later than one (1) day before the scheduled teleconference.

In preparation for and while engaging in the video teleconference or telephone conference, please follow these guidelines:

1. Use a landline whenever possible.
2. Use a headset rather than speakerphone.
3. Identify yourself each time you speak.
4. Be mindful that, unlike in a courtroom setting, interrupting can render both speakers unintelligible.
5. **Mute** when not speaking to eliminate background noise, *i.e.*, dog barking, kids playing, sirens, paper shuffling, emails pinging, drinking, and breathing. It all comes through. This will also prevent interruptions.
6. Avoid voice-activated systems that don't allow the speaker to know when someone else is trying to speak and they cut off the beginning of words.
7. Spell proper names.
8. Have judge, or courtroom deputy, confirm reporter in on the line.

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<sup>1</sup> Please see the attached sample form as a reference.

9. If someone hears beeps or musical chimes, that means someone has either entered or exited the conference. Please be aware that the judge may need to clarify that the report has not lost the line.

(This has happened before, and the reporter had to dial back in and tell the judge the last thing that the court reporter transcribed.)

Dated: October 20, 2020  
White Plains, New York

SO ORDERED:

A handwritten signature in dark ink, appearing to read 'N. S. Román', is written over a horizontal line.

NELSON S. ROMÁN  
United States District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

-v-

\_\_\_\_\_  
Defendant.

**WAIVER OF RIGHT TO BE  
PRESENT AT CRIMINAL  
PROCEEDING**

-CR- ( ) ( )

**Check Proceeding that Applies**

\_\_\_\_ Arraignment

I have been given a copy of the indictment containing the charges against me and have reviewed it with my attorney. I understand that I have a right to appear before a judge in a courtroom in the Southern District of New York to confirm that I have received and reviewed the indictment; to have the indictment read aloud to me if I wish; and to enter a plea of either guilty or not guilty before the judge.

After consultation with my attorney, I wish to plead not guilty. By signing this document, I wish to advise the court of the following. I willingly give up my right to appear in a courtroom in the Southern District of New York to advise the court that:

- 1) I have received and reviewed a copy of the indictment.
- 2) I do not need the judge to read the indictment aloud to me.
- 3) I plead not guilty to the charges against me in the indictment.

Date:

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Print Name

\_\_\_\_ Conference Date: \_\_\_\_\_

I have been charged in an indictment with violations of federal law. I understand that I have a right to be present at all conferences concerning this indictment that are held by a judge in the Southern District of New York, unless the conference involves only a question of law. I understand that at these conferences the judge may, among other things, 1) set a schedule for the case including the date at which the trial will be held, and 2) determine whether, under the Speedy Trial Act, certain periods of time should be properly excluded in setting the time by which the trial must occur. I have discussed these issues with my attorney and wish to give up my right to be present at the conferences. By signing this document, I wish to advise the court that I willingly give up my right to be present at the conferences in my case for the period of time in which access to the courthouse has been restricted on

account of the COVID-19 pandemic. I request that my attorney be permitted to represent my interests at the proceedings even though I will not be present.

Date:

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Print Name

I hereby affirm that I am aware of my obligation to discuss with my client the charges contained in the indictment, my client's rights to attend and participate in the criminal proceedings encompassed by this waiver, and this waiver form. I affirm that my client knowingly and voluntarily consents to the proceedings being held in my client's absence. I will inform my client of what transpires at the proceedings and provide my client with a copy of the transcript of the proceedings, if requested.

Date:

\_\_\_\_\_  
Signature of Defense Counsel

\_\_\_\_\_  
Print Name

**Addendum for a defendant who requires services of an interpreter:**

I used the services of an interpreter to discuss these issues with the defendant. The interpreter also translated this document, in its entirety, to the defendant before the defendant signed it. The interpreter's name is: \_\_\_\_\_.

Date:

\_\_\_\_\_  
Signature of Defense Counsel

**Accepted:**

\_\_\_\_\_  
Signature of Judge

Date: